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OFFICE OF PETITIONS

In re Patent No. 7,254,467 :
Fries et al. : DECISION ON REQUEST FOR
Issue Date: August 7, 2007 : RECONSIDERATION OF
Application No. 10/743,591 : PATENT TERM ADJUSTMENT
Filed: December 22, 2003 : and
Attorney Docket No. 133197/ : NOTICE TO INTENT TO ISSUE
GETS 5319.1 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed August 27, 2007. Patentees maintain that the patent term adjustment indicated on the patent should be corrected from two hundred forty (240) days to three hundred sixty-one (361) days.

The request for reconsideration of the patent term adjustment under § 1.705(d) is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred forty-one (**241**) days.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On August 7, 2007, application No. 10/743,591 matured into Patent No. 7,254,467. The instant request for reconsideration filed August 27, 2007, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 240 days. The PTA of 361

days was reduced by 121 days pursuant to 37 CFR § 1.704(c)(10) for the submission of drawings after the mailing of the notice of allowance. A reduction of 1 day was entered for drawings filed March 19, 2007. A reduction of 120 days was entered for drawings filed March 20, 2007. Patentees dispute these reductions.

With respect to the reduction of 1 day, the reduction is incorrect. A review of the record supports a conclusion that drawings were only filed on March 20, 2007. No drawings (or other paper warranting a reduction) were filed on March 19, 2007. Accordingly, the reduction of 1 day is being removed.

However, with respect to the reduction of 120 days, patentees' arguments have been considered, but not found persuasive. First, the reduction was entered pursuant to 37 CFR 1.704(c)(10), not 37 CFR 1.704(b). Second, there is no dispute that drawings were filed on March 20, 2007 after the mailing of the notice of allowance on December 29, 2006. Thus, the reduction was warranted. The filing of drawings after the mailing of a Notice of Allowance is properly a basis for reduction of patent term adjustment.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

Other than those papers identified in this Notice, all papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait until payment of the Issue Fee to begin the patent issue process. As a result, 37 CFR 1.704(c)(10) does not distinguish between papers that are and are not required by

the Office. Filing of any drawings after allowance will be treated as a failure to engage in reasonable efforts to conclude prosecution. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001; See also MPEP 2700.

In order to avoid this failure to engage in reasonable efforts to conclude prosecution of the application, patentees may have filed drawings in compliance with MPEP § 608.02(g) prior to the mailing of the notice of allowance.

Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment was properly reduced by 120 days, counting the number of days in the lesser period of four months (the period of March 20, 2007 to August 7, 2007 is greater than four months).

In view thereof, the reduction of 120 days was proper, but the reduction of 1 day was not.

It is concluded that the patent properly issued with a revised Patent Term Adjustment of two hundred forty-one (241) days.

Receipt is acknowledged of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred forty-one (241) days.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,254,467 B2
DATED : August 7, 2007
INVENTOR(S) : Fries et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 240 days

Delete the phrase "by 240 days" and insert – by 241 days--